

EXHIBIT C

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

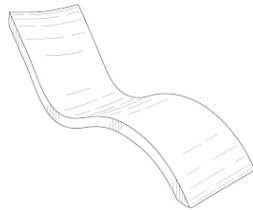
In re Application of:

Ledge Lounger, Inc.

App. No.: 88/600425

Filed: August 30, 2019

For:



Atty Docket No.: 009169.00006

Law Office: 104

Trademark
Examining Attorney: Angela Duong

DECLARATION OF CHRISTOPHER ANDERSON IN SUPPORT OF ACQUIRED DISTINCTIVENESS AND LACK OF FUNCTIONALITY

The undersigned, Christopher Anderson, being duly sworn, declares as follows:

1. I am Founder and Chief Executive Officer of Applicant and am authorized to execute this Declaration on behalf of Applicant. This Declaration is submitted in support of Applicant's claim for registration of the above-identified mark pursuant to Section 2(f) of the Lanham Act.
2. I am familiar with the use of the mark identified in the above-captioned application, which is used in association with Applicant's well-known lounge and outdoor furniture.
3. Applicant was founded in 2010 with a mission to build the best quality lounge and outdoor furniture designed for the pool's tanning ledge. As a part of that mission, Applicant created its signature chaise featuring the design covered by this application. Applicant's dedication to its mission has resulted in Applicant's success in becoming the market leader for high quality lounge and outdoor furniture.
4. Continuously since at least as early as September 29, 2011, Applicant's mark has been prominently incorporated into Applicant's tremendously popular lounge and outdoor furniture. Attached as Exhibit 1 is an image of the mark incorporated into Applicant's signature chaise product line.

5. Applicant's mark has become distinctive of the goods through Applicant's substantially exclusive and continuous use in commerce for almost five years immediately before the date of this statement.

Sales of Applicant's Signature Chaise

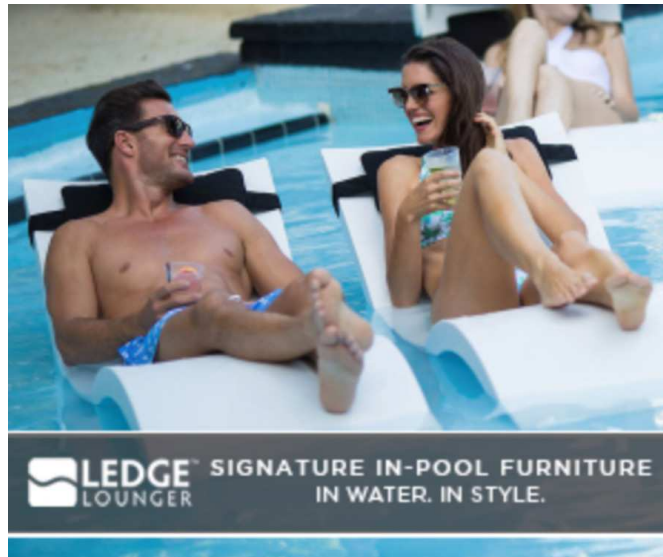
6. Since the release of its furniture bearing the mark in 2011, it has been the bestselling product for Applicant. Sales of Applicant's chaise product alone (which incorporates Applicant's mark) has exceeded \$20,700,000 and more than 47,000 units of goods bearing Applicant's mark have been sold through 2019. These products cost \$659.00 and have been sold online by Applicant and via third party retail stores and websites.
7. Applicant's furniture products featuring the design covered by this application are currently sold in nearly 230 retail stores nationwide. Its products including the mark are also promoted and sold on over 200 retailer websites, many of which are the websites of national chain stores. Applicant's products including the mark have become extremely in demand.

Advertising and Marketing

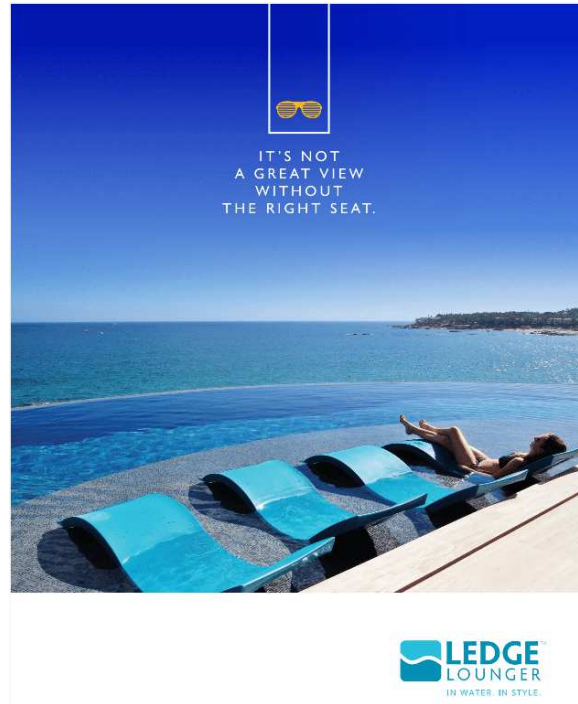
8. Applicant has dedicated a significant amount of time, resources and effort into establishing itself as the source of the furniture bearing the subject mark in the minds of consumers. The result of these efforts is widespread source recognition and brand identity.
9. Applicant has aggressively marketed its furniture incorporating the mark through numerous advertising campaigns in avenues such as digital media advertisements, print advertisements, Applicant's website, catalogs, commercials, promotional videos, social media posts, point-of-purchase displays, trade shows, sponsored emails, influencers and celebrities, product placement, podcasts, and product packaging. The mark is emphasized throughout Applicant's advertisements in product images as well as the company trademark shown below. The TESS record for Applicant's logo is attached as Exhibit 2. The purpose of this logo was to connect Applicant's mark to Applicant in the minds of consumers. This logo has been in use since January 21, 2012, and has been a registered trademark for Applicant since January 23, 2018.



10. As an example, Applicant's digital advertising conspicuously features the applied-for mark. It is without doubt the prominent feature of its advertisements, as shown in the advertisement below. Representative examples of other digital advertisements are attached as Exhibits 3-13.



11. Applicant's print advertising also highlights the trade dress of Applicant's lounge and outdoor furniture. Applicant's advertising is published in publications such as Luxury Pools Magazine, Ocean Home Magazine, Pool & Spa News, Aqua Magazine, Hospitality Design Magazine, Tips n' Trends (Harper's Bazaar Magazine), as well as sponsored emails for Luxury Pools, Aqua Magazine, Pool & Spa News, Better Homes & Gardens, and Swim University. Representative examples of Applicant's advertising campaigns are attached as Exhibits 14- 20.
12. Applicant's website was also designed to underline and affirm the design of its lounge and outdoor furniture to consumers. Excerpts from Applicant's current website are attached as Exhibit 21. Applicant has had tremendous traffic to its website, showing that many consumers are viewing these images and associating the mark with Applicant. Between 2016 and May 2020 alone, Applicant's website has had nearly 1,400,000 visits.
13. The trade dress of Applicant's lounge and outdoor furniture is also emphasized in its catalogs. Many of the images in the catalogs were chosen to highlight Applicant's product design. Examples of Applicant's catalogs from 2012, 2015, 2016, 2017, 2018, 2019, and 2020 are attached as Exhibits 22-28. As shown on the cover of the 2015 catalog below, Applicant's mark is prominently featured and reinforced by the company logo. Since 2015, over 58,000 copies of the catalog have been circulated and since 2018, there have been almost 18,000 online views of the digital copy of the catalog.

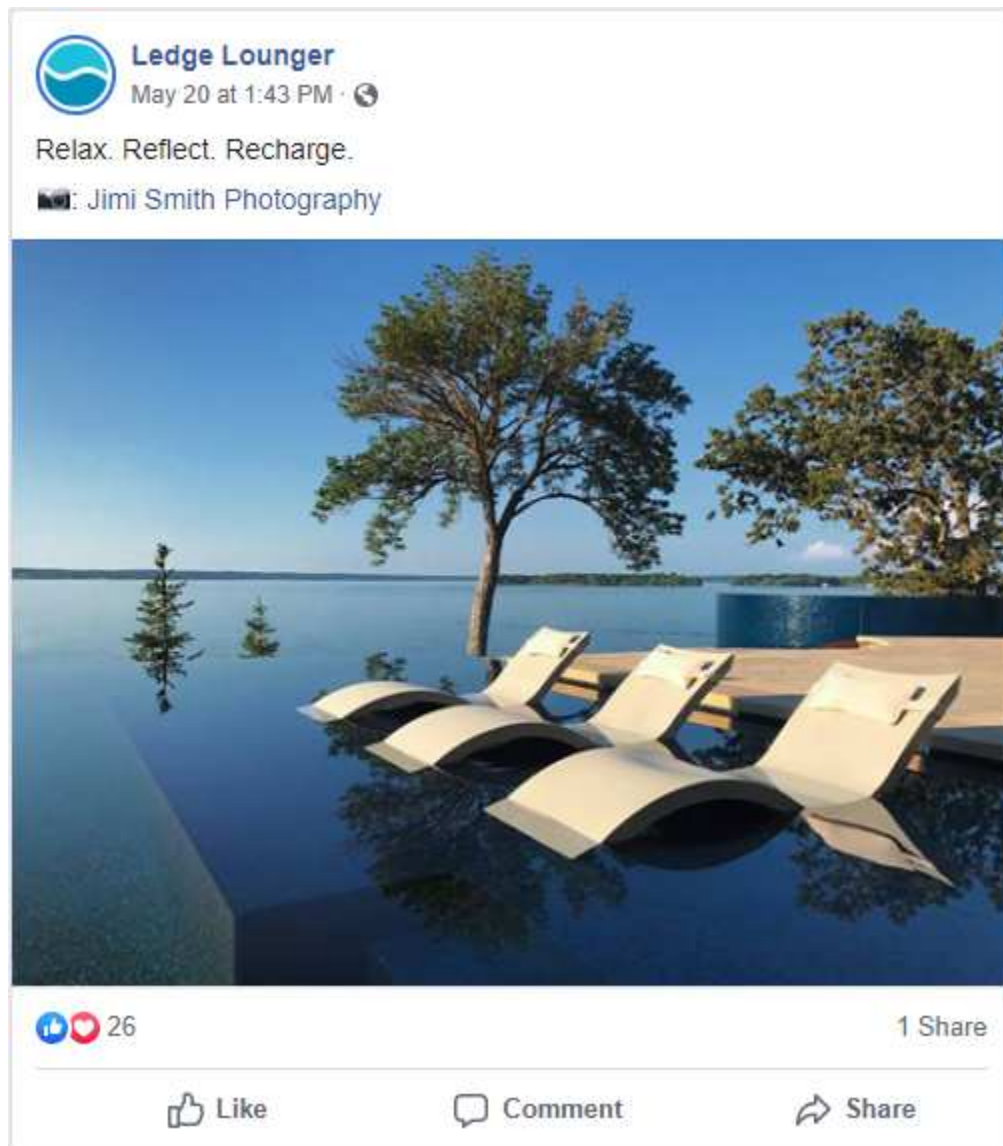


14. Applicant also advertises with design-focused commercials and videos. All of these commercials and promotional videos prominently display the design of Applicant's mark. The purpose of these marketing videos is to showcase the furniture design that is the subject of this application. Screenshots from one such video are shown below. This and several other similar videos are attached as Exhibits 29-34.



15. On its social media accounts Applicant regularly displays the mark, causing further associations between the design and Applicant in the minds of the public. An example of a post by Applicant to its Facebook account featuring the mark is shown below. Applicant has more than 824,400 monthly viewers on its Pinterest account, 27,650 people following its

Facebook page, and 19,800 people following its Instagram account. Applicant also has an active account on Houzz where its product bearing the mark is regularly posted. Representative examples of some of Applicant's posts highlighting the mark are attached as Exhibits 35-38.



16. Applicant uses influencers and celebrities to promote its products to their followers as well. Applicant has such promotional relationships with JJ Watt, Steve Aoki, Christina Anstead, Ben Higgins, Doug Ellin, Lisa Morales, and Jason Derulo, to name a few. These influencers and celebrities promote Applicant's products, including the design of its furniture, to their many fans and social media followers. Attached as Exhibits 39-42 are images from many of such promotional pages that highlight Applicant's mark. Applicant's products have also been featured in the Pool Chasers podcast.
17. Applicant's point of sale displays focus on the design of Applicant's mark as well. Images from such displays and in-store advertisements, such as the image below, are included in Exhibits 43-47.



18. Applicant also promotes its products at trade shows. For example, in 2013 Applicant attended the West Edge Design Show (California) and Southwest Pool & Spa Patio Show (San Antonio, Texas), in 2014 attended the International Pool Spa & Patio Expo (Orange County, Florida), National Plaster Council (Nashville, Tennessee), and Southwest Pool & Spa Patio Show (San Antonio, Texas), in 2015 attended the Hospitality Design Expo (Las Vegas, Nevada, West Edge Design Show (Los Angeles, California), and International Pool Spa & Patio Expo (Las Vegas, Nevada), in 2016 attended Southwest Pool & Spa Show (San Antonio, Texas), Northeast Pool & Spa Show (Atlantic City, New Jersey), Florida Pool and Spa Show (Orlando, Florida), Wester Pool & Spa Show (Long Beach, California), Texas Apartment Association Lonestar Expo (Houston, Texas), Interface Student Housing Conference (Austin, Texas), Hospitality Design Expo (Las Vegas, Nevada), American Society of Landscape Architects Annual Expo (New Orleans, Louisiana), and International Pool & Patio Expo (New Orleans, Louisiana), in 2017 attended Crittenden Multi-family Housing Conference (Dallas, Texas), Southwest Pool & Spa Show (San Antonio, Texas), Texas Apartment Association Lonestar Expo (Fort Worth, Texas), Hospitality Design Expo (Las Vegas, Nevada), International Contemporary Furniture Fare (New York, New York), Poolcorp International Sales Conference (Orlando, Florida), World Waterpark Association (West Palm Beach, Florida), International Pool Spa & Patio Expo (Orlando, Florida), and Canadian Pool & Spa Show (Niagara Falls, Ontario), in 2018 attended Pool Corp Retail Summit (Orlando, Florida), Southwest Pool & Spa Show (Houston, Texas), Club Managers Association of America Expo (San Francisco, California), Interface Student Housing Conference (Austin, Texas), Texas Apartment Association Lonestar Expo (San Antonio, Texas), Hospitality Design Expo (Las Vegas, Nevada), National Apartment Association Expo (San Diego, California), Splash Pool & Spa Show (Australia), Pool Corp International Sales Conference (Orlando, Florida), National Multi-Family Housing Council Student Housing Conference (Huntington Beach, California), International Pool Spa & Patio Expo (Las Vegas, Nevada), and Boutique Design New York (New York, New York), in 2019 attended Poolcorp Retail Summit (Grapevine, Texas), Southwest Pool & Spa Show (San Antonio, Texas), Florida Pool and Spa Show (Orlando, Florida), Texas Apartment Association Lonestar Expo (Houston, Texas), Hospitality Design Expo (Las Vegas, Nevada), National Apartment Association Expo (Denver, Colorado), Casual Market (Chicago, Illinois), Poolcorp International Sales Conference (Kissimmee, Florida), International Pool Spa & Patio Expo (New Orleans, Louisiana), and so far in 2020 has attended Pool Corp Retail Summit (Orlando, Florida), Mid-America Pool & Spa Show (Indianapolis, Indiana), International Builders Show (Las Vegas, Nevada), Southwest Pool & Spa Show, (Houston, Texas), Atlantic City Pool & Spa Show (Atlantic City, New Jersey), Southeast Pool & Spa Show (Nashville, Tennessee), Florida Pool and Spa Show (Orlando,

Florida), and Hearth Patio & BBQ Expo (New Orleans, Louisiana). The images from several trade show displays attached as Exhibits 48-66 show that Applicant emphasizes the design of its applied-for mark in this marketing channel.

19. Applicant has reinforced its branding efforts by predominantly displaying the applied-for mark dominantly on its furniture packaging as shown in Exhibit 67. It also gives away promotional merchandise such as beachballs, water bottles, frisbees, hats, sunscreen and tumblers, all which display Applicant's logo featuring the applied-for mark. Images of these products are attached as Exhibits 68-71.



20. Applicant's expenditures in the United States for media outreach, advertising, and promotional programs, including Applicant's mark, have exceeded \$2,700,000 since 2014. As a result of these marketing efforts, Applicant's furniture design has become hugely popular and well-known.
21. In addition to Applicant's own marketing efforts, its dealers circulate advertisements of their own. These dealer advertisements also highlight the design of Applicant's furniture covered by this application. Examples of those advertisements are attached as Exhibits 72-78.
22. Additional unsolicited media attention consists of Applicant's Mark being featured on television shows, including Insane Pools, Pool Kings, Desert Flippers, and Cool Pools, podcasts, including Pool Chasers, Casual Living, and On The House, as well as unpaid promotional mentions by Ellen DeGeneres, Kim Kardashian, Kendall Jenner, Eva Longoria, and Kourtney Kardashian.
23. Applicant's mark has also been featured by third parties on their blogs, such as Just Destiny Magazine, Luxury Pools, and Las Vegas Review Journal's blogs, and YouTube stations. This unpaid advertising highlights Applicant's mark. Examples of such promotions are attached as Exhibits 79-92.
24. Applicant and its mark have developed a reputation for excellence in the outdoor furniture industry. Applicant's mark is so iconic that it is also featured in third party advertisements for resorts and vacations. For example, it has been displayed in advertisements for Royal Caribbean Cruises, Sandals Resorts, and was even featured in the Hard Rock Hotel's Superbowl commercial. These examples are attached as Exhibits 93-95.

25. Applicant values the unpaid advertising of the products encompassing Applicant's mark in the millions of dollars.

Source Recognition

26. Consumers recognize Applicant as the source of its mark as evidenced from customer social media accounts displaying images of Applicant's mark tagged or otherwise directed to Applicant's social media account. This interaction shows that the public recognizes Applicant as the source of the mark. Representative examples of these posts are attached as Exhibits 96-126.
27. In addition, consumers often post YouTube videos and write online both reviewing and praising Applicant and its products. Consumer efforts in making these videos and articles further shows the popularity of Applicant's products and consumer recognition of Applicant as the source of its mark. They are also evidence of further means of unsolicited advertising. Representative examples of these articles and videos are attached as Exhibits 81 and 88.
28. For the reasons explained above, I believe Applicant's mark is recognized by the public as a trademark for Applicant's products and has become distinctive of Applicant's products as a result of Applicant's widespread, substantially exclusive, and continuous use of the mark for more than five years.

Functionality

29. Neither the applied-for mark, nor any features thereof, is or has been the subject of a design or utility patent or patent application, including expired patents and abandoned patent applications.
30. Numerous alternate designs are available for the features embodied in the mark. The alternative designs are equally efficient and competitive as the design in the mark. Screenshots and printouts of other lounge and outdoor furniture for sale showing alternative designs are attached as Exhibits 127-152.
31. The product design at issue is not the result of a comparatively simple or inexpensive method of manufacture in relation to alternative designs for the product.
32. Applicant's product design at issue is rotomolded. Rotomolding is a complicated and expensive process of producing hollow parts by placing thermoplastic powder or liquid resin into a hollow mold and then rotating the mold in different directions in an oven until the powder or resin melts and coats the inside of the mold cavity. The product design at issue is rotomolded from a high-quality, UV16 rated low density polyethylene (LDPE) resin.
33. The design at issue was developed separate from the ease of manufacturing considerations. The design was made using the complicated multi-step rotomolding process that requires 1) filling a specially designed mold with the LDPE resin, 2) heating the mold in an oven to melt the LDPE, 3) cooling the mold to solidify the part, and 4) removing the formed part from the mold. This process is a slow process in

comparison to other manufacturing processes, such as, injection molding or blow molding.

34. The design at issue was developed separate from cost analysis considerations. The design is rotomolded, which requires specialized and expensive equipment capable of performing the rotomolding process, as well as, costly ovens for heating the LDPE, and specially designed and expensive molds and related tooling from which the product is formed and held during the rotomolding process. Additionally, the design at issue is more expensive to make using the rotomolding process than conventional injection molding or blow molding due to the long machine cycle times for rotomolding, and because of significantly greater material costs to make the product having thicker walls as compared to injection or blow molded products which have much thinner walls and thus less material used.
35. The design at issue was developed separate from the function of lounge and outdoor furniture.

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of this application or any resulting registration, declares that the facts set forth in this application and declaration are true; all statements made of his knowledge are true; and all statements made on information and belief are believed to be true.

Date: 6/10, 2020
June 10

Ledge Lounger, Inc.

By: 

Name: Christopher Anderson

Title: Founder and Chief Executive Officer

Attachments:
Index of Exhibits
Exhibits 1-152

INDEX OF EXHIBITS TO DECLARATION AND RESPONSE

Exhibit No.	Description
1	Image from Applicant's website showing the mark incorporated into Applicant's signature chaise product line
2	Printout of TESS record for Applicant's Registration No. 5384225
3	Image of digital advertisement on Google
4	Image of digital advertisement on Facebook 2016
5	Image of digital advertisement on Facebook 2016